

6-1-2003

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Recommended Citation

Stephen, Lynn (2003) "Mediation and ADR: a regional view from Western Australia," *ADR Bulletin*: Vol. 6: No. 2, Article 5.
Available at: <http://epublications.bond.edu.au/adr/vol6/iss2/5>

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Regional perspective

Mediation and ADR: a regional view from Western Australia

Lynn Stephen

History and background

Western Australia is isolated from the rest of Australia in terms of time and distance and within WA there are some very remote areas. These include the Kimberley and the Pilbara in the far north, the Midwest and the Goldfields, and the south-western farming zone known as the wheatbelt. One and a half million people, the majority of the approximately two million Western Australians, live in the capital, Perth in the south-western corner of the State.

Bunbury has a population of approximately 30,000 people and is the largest region outside of Perth in the south-west of WA. The south-west covers an area of approximately 24,000 square kilometres and has a population of approximately 140,000 people. The region's activities include tourism, agriculture and horticulture, timber and forest products, mineral extraction, processing and manufacturing, service industries, and fishing and aquaculture.

Service providers and agencies in Bunbury often provide outreach services throughout the region including to the rural and more remote areas in the south-west.

Mediation and ADR

In Australia, and in other parts of the world, significant changes in how disputes are managed and resolved have occurred over the past two decades. ADR and mediation are now widely accepted in WA as viable and often preferable options for individuals, families, workers, management and others. A wide range of models now exists, and the word is spreading. However, while mediation and ADR services are readily available in urban areas, one of the major challenges is providing a range of high quality ADR services in regional, remote and rural areas of Western Australia.

This article discusses mediation and ADR from the personal perspective of a mediator who has practised in a large regional centre in Western Australia for more than 10 years.

The writer's experiences are not necessarily applicable to other regional services, clients or mediators, particularly to indigenous people and those working and living in extremely remote and rural areas.

Community Mediation Service

In 1992 the Bunbury Community Legal Centre (BCLC) received a one-off grant from Legal Aid to provide mediation training. Twenty people participated in that training, including people with social science, psychology, legal and other backgrounds.

BCLC, which received state funding in 1993, is the only community mediation service (CMS) in the south-west of Western Australia. The service provides a part-time broad based mediation service for dealing with family, neighbourhood, workplace and other civil matters. CMS also provides workshops and peer mediation training for schools in the region.

Introducing mediation into a small community takes time and effort. Providing education and training for other service providers has played a significant role in enabling CMS to develop and deliver mediation services in the south-west.

Advantages of working in a region

People have multiple information and



service needs when they face difficult problems and disputes. They need to receive information that will enable them to choose services that are appropriate to their needs at particular times during the management and resolution of their issues.

In regional settings service providers can often refer clients to the service they need in a timely and more personalised manner. Working in a relatively large regional centre like Bunbury is obviously different from a remote and/or rural setting. However because Bunbury is still a relatively small community, personal contact between service providers is logistically easier than it is in a city.

However working in small communities can also be somewhat problematic, as I found when I returned to work after six months' leave. I was hoping for a couple of quiet weeks to readjust to being back at work, but it didn't take long for the word to spread that I was back! Due to unavailability of relief staff, my position had been unfilled during my leave.

Challenges for regional mediation and ADR

Isolation

Most people think Perth is extremely isolated from the rest of Australia. When you work in Western Australia and the place you are employed in is outside Perth you are seen to be pretty much on the fringe, even though Bunbury is a fairly large coastal regional centre.

Those working in the regions face battles with isolation from other mediation and ADR practitioners and services, limited options for sharing of knowledge and resources, and reduced access to mentoring and supervision.

Agencies and workers in urban areas do not have the same need to maintain links with those in the regions, therefore regional and remote practitioners are faced with the added burdens of time, cost, distance and travel to network with those in urban areas.

Like the rest of WA, we suffer from the difficulties associated with distance and time in relation to our eastern counterparts, which is compounded by our lack of summer daylight saving. However, in terms of access to

mediation and ADR services the rural and remote parts of Western Australia are even more disadvantaged than those living in Bunbury.

Nonetheless, WA has kept pace with developments in mediation and ADR both nationally and globally. When I was in the United States and the United Kingdom in 1995 studying family mediation, I was pleasantly surprised to discover that the issues and challenges being tackled by people in other countries were similar to those we face here. I was encouraged to see that ADR in Australia seemed to be making good progress in comparison with other countries, considering the fact that at that time the birth of mediation was about a decade behind the US. Regular and recent conference attendance has reinforced my 1995 impressions.

Regional mediators face many of the same challenges as practitioners working in urban areas. In particular the quality of mediation needs to be explicitly assured so that other service providers and professionals can trust in the services to which they refer their clients. Creating networks, establishing credibility and educating other service providers about the option of using mediation and ADR are important factors in promoting and delivering these services.

Marketing ADR

Mediation, as a form of ADR, has been around long enough for most service providers and professionals to have a reasonable understanding of the process, the different types, and the issues.

However many people working in the ADR field, including those in the regions, are concerned about the lack of community awareness and understanding of mediation and ADR.

Some suggest that poor marketing of mediation and ADR has resulted in limited spontaneous demand for mediation. I believe that 'selling' a service rather than a product is always a difficult task and in this case even the term 'alternative' raises questions about using ADR. A change of terminology, from ADR to Primary DR as has happened in Family Law, has been an attempt to put ADR forward as a 'first' rather than an 'alternative'.

Educating people about a process they may never need or use is a real challenge. However, once people use mediation they are one of the best sources of referrals, as those who are satisfied clients will suggest mediation to others. This is particularly so in regional areas where 'word of mouth' works very well. However, adequate time is needed to enable the service to develop a client base for this to occur.

Mediators themselves bear some responsibility for having marketed mediation in overly simplistic terms. Conflicts are complex and there are not simple forthright answers to issues so it is not always the case that all parties will be satisfied with the outcome, respect one other, or even be friends. If mediators set unrealistically high expectations the parties will distrust the process.

For mediation to become effectively part of a cultural pattern of managing conflict, mediators and ADR practitioners need to adopt a realistic approach, that embraces an understanding of the diversity of human nature and a realistic understanding and acceptance of conflict.

Client issues

Conflict of interest is a major issue for prospective regional clients. Because fewer services are offered it is often difficult for everyone to have the same access to low cost legal services such as Legal Centres and Legal Aid. For example those people who use the Legal Centre for legal assistance and advice are often unable to use the Mediation Service, which operates under the umbrella of the Legal Centre.

While it is a given that confidentiality is guaranteed for all clients, it is difficult to maintain privacy in small communities. Preserving anonymity is very important but sometimes impossible. One of the advantages of the CMS is that it is located in offices where there are a number of different services, so people could be accessing any one of the agencies in the building. Even this does not necessarily ensure privacy.

It is also more likely that mediators working in small communities will face the problem of often having to refuse services to clients with whom they have,

or have had, either a personal or a professional relationship. If there are no alternative mediation services in the area these people have the added burden of having to travel long distances to access mediation.

Practitioner issues

As mentioned, Bunbury is not as isolated as many other areas in WA and many would argue that we are comparatively well off in terms of availability of services. For example, in Bunbury there is a Legal Centre, a Legal Aid Office and many other agencies.

I have seen mediation and ADR develop rapidly over the last decade or so and I have been fortunate to be able to contribute a rural and regional perspective as a member of the Commonwealth Attorney General's Family Law Pathways Advisory Group (FLPAG) and as a current member of the National Alternative Dispute Resolution Advisory Council (NADRAC).

As the regional representative on each of these bodies I have undertaken to assist others from urban areas to hear first hand about regional issues, while simultaneously increasing my understanding of the similarities and differences that exist between urban and rural services.

Training and development

There is little doubt that like all other practitioners, mediators working in regional, rural and remote areas need ongoing training and education so that the service is the best that they can offer and so that those referring clients to a service can be confident that the staff are 'in touch' with new developments. While this all takes extra time and money, it is essential for a regional service to survive.

I have not always lived and worked in the country and I have considered moving back to the city from time to time because it is difficult to work in relative isolation from other practitioners. The cost and effort involved in travelling for training, attending meetings, and ongoing education is extremely high. But I now prefer to live and work in the

country and visit to the city, whereas others like it the other way round.

Opportunities for advancement

One of the major difficulties for regional centres is attracting staff. Opportunities for promotion and professional development are limited and as a result a regional service often becomes reliant on a small number of people (sometimes one person) to develop, maintain and deliver a service to meet community demand. In addition people who do choose to work in regional centres often stay only long enough to gain enough experience to move to a position in the city to further their career opportunities.

Demand for services

There is a clear need for mediation and ADR services in regional, rural and remote areas. However the population of these areas needs to be considered, especially when comparing the ratio of population to services found in an urban setting. In the regions it can also take more time for community awareness, understanding and acceptance of a new service to develop.

Policymakers and funders need to buffer mediation services from the demand for results and high client numbers and support longer developmental periods for rural, remote and regional mediation and ADR services to mature.

Funding

In essence, regional services need adequate, secure, flexible recurrent core funding that will ensure sustainability and enable the service to attract and maintain suitably qualified and committed staff members and to provide outreach services. Moreover additional funding is required to cover the cost of adequate supervision and ongoing education and training, all of which will require travelling and other costs associated with the provision and advancement of high quality credible services in regional areas.

The following comments were contained in a letter of support for CMS written in February 2003 by Bunbury Magistrate K T Fisher:

... the service in my view is choking through inadequate funding CMS requires the security of knowledge that it may not only continue to provide a well established service but permit its natural growth through demand and for its long overdue expansion into the regional centres.

But, speaking of obstacles, when things get tough I think of what an ageing Billy Joel once said as he exited the stage from a concert in Perth some years ago, 'Thanks for coming, thanks for keeping the faith'. I think that's what people who are committed to ADR have done, in the regions and everywhere else – kept the faith, and

contributions

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looked for ways to meet and overcome the challenges.

Wish list for the future of ADR and mediation in regional, remote and rural WA

Commitment by funding bodies

Commitment by funding bodies to support regional services to enable them to provide and maintain high quality mediation and ADR services and expand their services to meet client needs. In addition to providing face to face services, the funding of telephone, video and online ADR is essential for the development of ADR in locations outside the cities.

Consideration of location and cultural issues

Location and cultural appropriateness of services is also important. Consideration needs to be given to where services are located within regional areas particularly with respect to access, privacy and culture. All conflict is multi-cultural to some degree, due to diversity within culture as a result of differences of opinions, values, attitudes and aspirations as well as differences of experience that are reflected in social class, gender and ethnicity. However, protecting cultural norms means that we must not provide services that may lead people to suffer under a white middle class system that is not sensitive to their needs.

Cooperation between all stakeholders

Developing and maintaining links between all the key players involved in ADR in the city and the country is an essential factor in ensuring that people can access the services they need in a timely, just, equitable and effective manner. Those involved in the field need alliances and coalitions among themselves so they offer a collective voice that represents their shared interests and that recognises, acknowledges and respects their diversity.

Research and development

There is a need for all those involved in conflict management and dispute resolution at local, state, national and international levels, to build on the valuable developments that have occurred over the past two decades. Much can be learned from past successes and failures that will support future policy and resource decisions.

Support is needed for further research and development of balanced, integrated and innovative approaches to mediation and ADR and there is a special need to see that these developments reach those in regional, rural and remote areas. ●

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PUBLISHER: Oliver Freeman **PUBLISHING EDITOR:** Linda Barach **PRODUCTION:** Kylie Gillon **SUBSCRIPTIONS:** \$495.50 per year including GST, handling and postage within Australia **FREQUENCY:** 10 issues per annum plus binder and index **SYDNEY OFFICE:** 8 Ridge Street North Sydney NSW 2060 Australia **TELEPHONE:** (02) 9929 2488 **FACSIMILE:** (02) 9929 2499 adr@richmondventures.com.au

ISSN 1440-4540 Print Cite as (2003) 6(2) ADR

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